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CHARLES ELMORE CROPLEY
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. [redacted] 827

COTTON STATES FERTILIZER COMPANY, C. B. CLAY and W. J. O'SHAUGHNESSEY,
Petitioners,

vs.

S. L. HURT,
Respondent.

Writ of Certiorari
On Petition for

RESPONDENT'S BRIEF

CARL T. HOFFMAN
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Attorneys for Respondent

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The Writ of Certiorari should be denied for the following reasons:

1. The Petitioners have not cited any case, nor is there any case in conflict with the decision of the Circuit Court of Appeals for the Fifth Circuit in the case at bar. In the case at bar, the testator bequeathed to respondent stock in the corporation, **in kind**; the respondent legatee, having learned of the fraudulent acts of the managing officers and directors, demanded of the executor or trustee that this suit be brought, but the executor or trustee refused to bring the suit; whereupon respond-

ent took this action asserting his right to the protection of a court of equity.

The petitioners have not cited any case, and there is no such case, similar to thise one, so the decision of the Court of Appeals is not in conflict with any other decision, nor is it contrary to Rule 23 (b) of the Federal Rules nor the Georgia Statute, when it is remembered that the Rule and Statute originated from the application of equitable principles and were not designed as a shield for the perpetration of frauds.

2. Every contention made by the petitioners is fully and completely covered and answered by the Opinion of the Court of Appeals for the Fifth Circuit in this case, (**Hurt vs. Cotton States Fertilizer Company,** et al, 145 Fed. (2d) 293.)

3. The Petition for Certiorari is obviously filed for the purpose of delay to avoid an equitable accounting by the managing directors of the corporation.

Respectfully submitted.

CARL T. HOFFMAN
N. J. DURANT
SAM C. MATTHEWS
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